

LAND EXCHANGE BILLS

HEARING
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS
OF THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ONE HUNDRED NINTH CONGRESS
FIRST SESSION
ON

S. 100	S. 404
S. 235	H.R. 816
S. 741	S. 761
H.R. 486	

MAY 11, 2005



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LAND EXCHANGE BILLS

WEDNESDAY, MAY 11, 2005

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:12 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Larry E. Craig presiding.

OPENING STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Senator CRAIG. The Subcommittee on Public Lands and Forests will be in order. My apologies for running a little late. I think we all got slightly dislocated for a few moments during the noon hour, but we're back on track.

Good afternoon to all of you. I want to welcome all of you to this legislative hearing: Joel Holtrip, Deputy Chief for the National Forest Service System, Tom Lonnie, BLM Assistant Director, Minerals, Realty, and Resource Protection. It's nice to see both of you.

Joel, I want to congratulate you on your recent promotion. I'm sure that we'll be spending more quality time together now that you lead that portion of the Forest Service that this committee has responsibility for.

Today, we are considering the following legislative proposals: S. 100, to authorize the exchange of certain land in the State of Colorado; S. 235 and H.R. 816, to direct the Secretary of Agriculture to sell certain parcels of Federal land in Carson City and Douglas County, Nevada; S. 404, to make a technical correction relating to land conveyance authority by Public Law 108-67; S. 741, to provide for the disposal of certain Forest Service administrative sites in the State of Oregon, and for other purposes; S. 761 to rename the Snake River Birds of Prey National Conservation Area in the State of Idaho as the Morley Nelson Snake River Birds of Prey National Conservation Area in honor of the late Morley Nelson, an international authority on birds of prey who was instrumental in the establishment of the National Conservation Area, and for other purposes; and H.R. 486, to provide a land exchange involving private land and BLM land in the vicinity of Holloman Air Force Base, New Mexico, for the purpose of removing private land from the required safety zone surrounding munitions storage bunkers at Holloman Air Force Base.

I do want to mention S. 761, my bill to rename the Snake River Birds of Prey National Conservation Area to the Morley Nelson

Snake River Birds of Prey National Conservation Area. Morley worked most of his life to ensure the protection of world-class management of this area. I believe that the area would not have been designated a national conservation area without his dedicated efforts, and I believe this Congress should recognize his hard work and dedication. Few were ever as committed to birds of prey, raptors, as was the late Morley Nelson.

I know that Senators Smith and Wyden may want to speak on their bill, S. 741, to convey a number of administrative sites on several forests in Oregon, and then Senator Salazar may want to speak on S. 100, the Pitkin County, Colorado land exchange, so I'll finish up here.

I have two thoughts about today's bills. First, this is the second time recently that a Member has brought forward a land exchange bill that should have been accomplished through the administrative process. But it has taken a decade of work and frustration before someone finally asked Congress to step in. I am increasingly troubled by the Federal agency's inability to make the administrative land exchange process work in a timely manner.

Last, I continue to be concerned about land conveyances that develop new ways to share the excess revenues or receipts from the conveyances or exchanges with the States and local governments. I'm worried that we are developing a new set of laws on Federal Government revenue sharing that will treat each State differently. And I hope we will think about this trend before we change the process to the point that it becomes something different for every state.

None of my colleagues are here at this moment. So with that recognition, let me turn to our witnesses, who are here with us today, and Joel, we'll start with you.

STATEMENT OF JOEL HOLTRIP, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE, DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY GREG SMITH, DIRECTOR OF LANDS, U.S. FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. HOLTRIP. Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today in order to provide the Department's views on S. 100, Pitkin County Land Exchange Act, S. 235, and H.R. 816, Nevada National Forest Land Disposal Act; S. 404, Washoe Tribe of Nevada and California Land Conveyance; and S. 741, Oregon National Forest Administrative Site Disposal Act. I am accompanied today by Greg Smith, U.S. Forest Service Director of Lands.

S. 100 would direct the Secretary of Agriculture to exchange 13 parcels of National Forest System lands totaling 11.42 acres and the Secretary of the Interior to exchange one 40-acre parcel of Bureau of Land Management Land for two parcels of non-Federal land, 35 acres, and 18.2 acres.

The Departments would have no objection to the enactment of S. 100 if the reversionary clause in section 5(d)(1)(B) is modified. Interior would like the opportunity to work with the committee and the sponsors of the bill to ensure that the reversionary clause is discre-

tionary for the Secretary of the Interior to avoid potential liability to the Federal Government.

Also, the Departments would like the opportunity to finalize the map cited in the legislation to ensure the accuracy of the Federal parcels to be transferred.

S. 235 and H.R. 816 would direct the Secretary of Agriculture to sell seven isolated parcels of National Forest System land in Carson City or Douglas County, Nevada, ranging from 2½ to 80 acres in size. Proceeds from the sales would be disbursed to various State and local entities and the Federal Government.

The Department agrees these tracts of National Forest System land are difficult and inefficient to manage and appropriate for conveyance. The Department would not oppose the bill if the proceeds generated from the sale of these lands were used to fund critical facility maintenance and construction needs on National Forest System lands. We would like to work with the committee and the bill sponsors regarding the distribution and use of the proceeds generated from the sales of these Federal parcels.

Public Law 108-67 directed the conveyance of approximately 24 acres of National Forest System to the Department of the Interior to be held in trust for the Washoe Tribe of Nevada and California. The proposal in S. 404 would shift the conveyance described in Public Law 108-67 approximately 615 feet south along the Skunk Harbor shoreline adjacent to Lake Tahoe.

The Department recognizes the tribe's interest in adjusting the conveyance in Public Law 108-67, but believes S. 404 will create additional management challenges. We would recommend working with the committee, the tribe, and the bill sponsors to ensure that the tribe's conveyance objectives are met while mitigating the public access issues derived from the shift in the conveyance.

S. 741 would authorize the Secretary of Agriculture to sell or exchange under such terms as the Secretary may prescribe any or all right title and interest of the United States in and to the following 25 National Forest System lands and improvements located in the Rogue River, Siskiyou, Siuslaw, Umpqua, and Willamette National Forests in the State of Oregon.

S. 741 would also correct an unanticipated problem generated when the Rogue-Umpqua Divide Wilderness was initially designated.

The Department appreciates the interest and support of the committee and bill sponsors in helping us deal with our needs for facilities realignment. As the bill illustrates, the Department has a number of facilities and appurtenant land no longer needed by the agency.

The fiscal year 2006 budget contains a proposal for legislation that would authorize the Secretary to sell such units excess to the agency's need and to utilize the proceeds from those sales for the acquisition, improvement, maintenance, and disposition of administrative sites and capital improvements on National Forest System lands. This authority would eliminate the need to pass legislation for every State or forest that has these needs.

The administration will soon forward legislative language to Congress to accomplish these worthy goals. In this context, the Department could not support S. 741 without the following modification.

Under section 2(c), the Secretary is authorized to convey without consideration to the State of Oregon or a local government for public purposes any or all right, title, and interest of the United States in and to any of the land described in subsection (a).

The Department would recommend the lands and accompanying buildings be offered to the State of Oregon or a local government at market value, and that proceeds of the conveyance be used for the acquisition or construction of new facilities or the reconstruction of existing facilities. This approach would then be consistent with the administration's legislative proposal.

In addition, section 329 of the Department of the Interior and Related Appropriations Act of 2002, as amended, established a pilot program authorizing the conveyance of excess Forest Service structures. The tracts identified in section 2(a)(17)-(23) have been sold under this authority, and we would recommend removing them from the bill.

We are supportive of making the technical correction of the Rogue-Umpqua Divide Wilderness as identified in S. 741.

This concludes my statement and I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Holtrip follows:]

PREPARED STATEMENT OF JOEL HOLTRIP, DEPUTY CHIEF FOR NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE, ON S. 100, S. 404, S. 741, AND S. 235 AND H.R. 816

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today in order to provide the Department's views on S. 100—Pitkin County Land Exchange Act of 2005, S. 235 and H.R. 816—Nevada National Forest Land Disposal Act of 2005, S. 404—Washoe Tribe of Nevada and California Land Conveyance and S. 741—Oregon National Forest Administrative Site Disposal Act. I am accompanied today by Greg Smith, U.S. Forest Service Director of Lands.

S. 100—PITKIN COUNTY LAND EXCHANGE ACT OF 2005

S. 100 would direct the Secretary of Agriculture to exchange thirteen parcels of National Forest System lands (totaling 11.42 acres) and the Secretary of the Interior to exchange one 40 acre parcel of Bureau of Land Management (BLM) land for two parcels of non-federal land (35 acres and 18.2 acres) if Pitkin County, Colorado offers to convey title to the non-federal land that is acceptable to the Secretary of Agriculture. The lands acquired by the Secretaries would then become part of the White River National Forest in Colorado. The federal lands would be conveyed to Pitkin County, Colorado.

The Departments would have no objection to the enactment of S. 100 if the reversionary clause in section 5(d)(1)(B) is modified. DOI would like the opportunity to work with the Committee and the sponsors of the bill on amendments to ensure that the reversionary clause is discretionary for the Secretary of the Interior to avoid potential liability to the Federal government. Also, the Departments would like the opportunity to finalize the map cited in the legislation to ensure the accuracy of the federal parcels to be transferred.

The acquisition of the non-federal parcels would consolidate National Forest land ownership in and around the historic Ashcroft Townsite and on Smuggler Mountain. The non-federal parcels and surrounding lands are a popular sightseeing and recreation destination used for Nordic skiing and contain historic structures associated with the U.S. Army's 10th Mountain Division during World War II.

Section 5(a)-(c) of the bill would require that the value of the federal and non-federal lands directed to be exchanged under S. 100 be equal, with values being determined by appraisal conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions, the Uniform Standards of Professional Appraisal Practices and the Forest Service appraisal instructions. The bill includes provisions on equalizing values, if necessary.

Section 5(d)(1)(A) of the bill requires Pitkin County to grant to an entity acceptable to the Secretary of the Interior a permanent conservation easement. The con-

servation easement would provide for public access on the BLM parcel conveyed to the County and would limit future use to recreational, fish and wildlife and open space purposes only. However, under section 5(b)(2) of the bill, the appraiser would be directed not to consider the easement in appraising this parcel.

S. 235 AND H.R. 816—NEVADA NATIONAL FOREST LAND DISPOSAL ACT OF 2005

For ease of discussion references to S. 235 also apply to H.R. 816, unless otherwise noted. S. 235 would direct the Secretary of Agriculture to sell seven specific parcels of National Forest System land in Carson City or Douglas County, Nevada ranging from 2.5 to 80 acres in size. Proceeds from the sales would be dispersed to various state and local entities, and the federal government.

Section 3(d)(1) of the bill provides that the Secretary shall “(A) pay five percent to the State of Nevada for use for the general education program of the state; (B) pay five percent to the Carson Water Subconservancy District in the State; (C) deposit 25 percent in the fund established under Public Law 90-171 (commonly known as the Sisk Act; 16 U.S.C. 484a); and (D) retain and use, without further appropriation, the remaining funds for the purpose of expanding the Minden Interagency Dispatch Center in Minden, Nevada, as provided in paragraph (3).”

Section 3(d)(2) of the bill provides that the amounts deposited in the Sisk Act Fund “shall be available to the Secretary until expended, without further appropriation, for the following purposes: (A) Reimbursement of costs incurred by the local offices of the Forest Service in carrying out land sales under this section, not to exceed 10 percent of the total proceeds of the land sales. (B) The development and maintenance of parks, trails, and natural areas in Carson City or Douglas County, (H.R. 816 also lists Washoe County, Nevada), in accordance with a cooperative agreement entered into with the unit of local government in which the park, trail or natural area is located.”

The Department agrees these tracts of National Forest System land are difficult and inefficient to manage, and appropriate for conveyance. However, the Administration is concerned that the proposed use of proceeds from the sale of real property—a conversion of a capitol asset owned by the Federal taxpayer—would support ongoing operational expenses, including those of non-federal entities. The Department would not oppose the bill if the proceeds generated from the sale of these lands were used to fund critical facility maintenance and construction needs on National Forest System lands. Considering the nature of the lands proposed for sale, we think the use of these sale proceeds for funding facility projects is appropriate and would further the Forest Service’s facilities realignment objectives. The President’s FY 2006 Budget includes a more fiscally prudent proposal which would provide the Secretary with the authority to sell administrative sites, to provide more efficient real estate management of lands and facilities throughout the entire National Forest System.

We would like to work with the committee and the bill’s sponsors on amendments regarding the distribution and use of the proceeds generated from the sales of these Federal parcels.

S. 404—WASHOE TRIBE OF NEVADA AND CALIFORNIA LAND CONVEYANCE

P.L. 108-67 directed the conveyance of approximately 24 acres of NFS land to the Department of the Interior to be held in trust for the Washoe Tribe of Nevada and California. The proposal in S. 404 would shift the conveyance described in P.L. 108-67 approximately 615 feet south along the Skunk Harbor shoreline adjacent to Lake Tahoe. The current conveyance includes only rocky shoreline. S. 404 would include approximately 300 feet of sandy beach. The conveyance of 80% of the public’s accessible sandy beach area in Skunk Harbor will limit public access to the remaining 90 feet of sandy beach located near the historic Newhall House. This will limit the approximately 6,000 people who use Skunk Harbor annually to only 90 feet of public beach. The increased usage of the beach will subsequently increase the management needs for the beach area and the adjacent Newhall House.

The Department recognizes the Tribe’s interest in adjusting the conveyance in P.L. 108-67 but believes S. 404 will create additional management challenges. We would recommend working with the Committee, the Tribe and the bill sponsors on amendments to ensure that the Tribe’s conveyance objectives are met while mitigating the public access issues.

The boundary description in S. 404 legislation is not easily identified on the ground. In order to avoid long term survey and land ownership issues, we recommend that the Bureau of Land Management through the Bureau of Indian Affairs or a private Licensed Surveyor provide a legal description and Record of Survey once the boundary has been determined. The Department recommends making

changes to the boundary tied to identifiably distinct features on the ground (e.g. roads). These boundary changes would insure a more effective management of the National Forest System lands adjacent to the lands being conveyed to the Tribe.

It is important to note that Forest Service personnel, using geographic information system techniques, estimated the adjusted boundary described in S. 404 which resulted in approximately 21.6 acres being conveyed rather than the 24.3 acres as mentioned in S. 404 and conveyed under P.L. 108-67. This is displayed on the map generated for the hearing today.

S. 741—OREGON NATIONAL FOREST ADMINISTRATIVE SITE DISPOSAL ACT

S. 741 would authorize the Secretary of Agriculture to sell or exchange, under such terms as the Secretary may prescribe, any or all right, title and interest of the United States in and to the following 25 National Forest System lands and improvements located in the Rogue River, Siskiyou, Siuslaw, Umpqua, and Willamette National Forests in the State of Oregon. S. 741 would also correct an unanticipated problem generated when the Rogue-Umpqua Divide Wilderness was initially designated.

The specific tracts listed in S. 741 are as follows:

The Rogue River-Siskiyou National Forest

- (1) The Star Gulch Complex consisting of 2.25 acres and six buildings;
- (2) The Butte Falls Housing Complex consisting of 2.5 acres and four buildings;
- (3) The Old Agnes Guard Station consisting of 2.5 acres and six buildings;
- (4) The Chetco Ranger District Housing complex consisting of 1.5 acres and 5 buildings;
- (5) The Gold Beach House consisting of 0.25 acres and one building;
- (6) The Powers South Work Center consisting of 1.59 acres and eight buildings;

The Siuslaw National Forest

- (7) The Gardiner Administrative Site consisting of 3.5 acres and four buildings;
- (8) The Waldport Administrative Site consisting of 6.65 acres and four buildings;

The Umpqua National Forest

- (9) The Roseburg Service Center Administrative Site consisting of 2.92 acres and five buildings;
- (10) The Roseburg Powder House Administrative Site consisting of 1.34 acres;
- (11) Brown Street Residence Administrative Site consisting of 2.35 acres and three buildings;

The Willamette National Forest

- (12) The Blue River Administrative Site consisting of 31.91 acres and ten buildings;
- (13) The Hemlock House consisting of 6 acres and two buildings;
- (14) The Flat Creek Administrative Site consisting of 45 acres and accompanying buildings;
- (15) The Rigdon Administrative Site consisting of 15 acres and accompanying buildings;
- (16) The Cascadia Administrative Site consisting of 15 acres and two buildings;
- (17) The Sweet Home House consisting of 0.07 acres and one building;
- (18) The Sweet Home House consisting of 1.4 acres and one building;
- (19) The Sweet Home House consisting of 0.21 acres and one building;
- (20) The Mill City House consisting of 0.30 acres and one building;
- (21) The Mill City House consisting of 0.30 acres and one building;
- (22) The Mill City House consisting of 0.30 acres and one building;
- (23) The Mill City House consisting of 0.33 acres and one building;
- (24) The Willamette National Forest Administrative Site consisting of 2.24 acres and five buildings; and
- (25) The West Fir residences consisting of 20 acres.

The Department appreciates the interest and support of the Committee and bill sponsors in helping us deal with our needs for facilities realignment.

S. 741 authorizes the sale of the above mentioned tracts through auction or bid and provides for the use of brokers to facilitate the sales. In addition any appraisals deemed necessary by the Secretary shall conform to the Uniform Appraisal Standards for Federal Land Acquisitions. Proceeds derived from the sales will be deposited in the fund established under Public Law 90-171 (commonly known as the Sisk Act; 16 U.S.C. 484a). These funds would be made available to the Secretary, without further appropriation, to be used for the acquisition of lands and interest in lands in the specified National Forests, the payment or reimbursement of costs incurred

by the Forest Service in processing the conveyance and for the acquisition or construction of new facilities or the rehabilitation of existing Forest Service facilities.

As the bill illustrates, the Department has a number of facilities and appurtenant land no longer needed by the agency. The FY 2006 Budget contains a proposal for legislation that would authorize the Secretary to sell such units excess to the agency's need and to utilize the proceeds from those sales for the acquisition, improvement, maintenance, and disposition of administrative sites and capitol improvements on National Forest System lands. Funds deposited under this authority would address backlogs and administrative consolidations while improving efficiencies through the reconstruction of functionally obsolete facilities or construction of new facilities. This authority would eliminate the need to pass legislation for every State or Forest that has these needs. The Administration will forward legislative language to Congress within the next several weeks to accomplish these worthy goals. In this context, the Department could not support S. 741 without the following modification:

Under Section 2(c) the Secretary is authorized to convey, without consideration, to the State of Oregon or a local government for public purposes any or all right, title and interest of the United States in and to any of the land described in subsection (a). The Department would recommend the lands and accompanying buildings be offered to the State of Oregon or a local government at market value and that proceeds of the conveyance be used for the acquisition or construction of new facilities or the reconstruction of existing facilities. This approach would then be consistent with the Administration's legislative proposal.

In addition, Section 329 of the Department of the Interior and Related Appropriations Act of 2002 (Public Law 107-63), as amended, established a pilot program authorizing the conveyance of excess Forest Service structures. The tracts identified in section 2(a)(17) through (23) have been sold under this authority. We would recommend removing them from the bill.

S. 741 would make a technical correction of the Rogue Umpqua Divide Wilderness by slightly modifying the boundary so that (1) a road is outside the wilderness by removing approximately 1.3 acres from the wilderness, and (2) by adding approximately 1.3 acres of land with wilderness character to the wilderness to offset the removal.

The original legal description, prepared in accordance with the map of record at the time of designation, inadvertently resulted in a short segment of Forest Service Road No. 2947-300 being within the Rogue Umpqua Divide Wilderness by approximately 20 feet. This has resulted in the closure of the road which is necessary to access National Forest System land beyond the area where the road is within the wilderness area. The small portion of land cut off by the road, which is designated as wilderness, clearly has no wilderness character.

This concludes my statement, I would be happy to answer any questions that you may have.

Senator CRAIG. Joel, thank you very much.

Now, Tom, we'll turn to you for any additional comments you will make on the relevant legislation.

**STATEMENT OF THOMAS P. LONNIE, ASSISTANT DIRECTOR,
MINERALS, REALTY AND RESOURCE PROTECTION, BUREAU
OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR**

Mr. LONNIE. Thank you for the opportunity to present the views of the Department of the Interior on H.R. 486 legislation providing for the exchange of public and private land in the vicinity of Holloman Air Force Base in New Mexico.

In previous testimony on similar legislation, H.R. 4808, given in the 108th Congress, we raised significant concerns, several of which have been addressed in H.R. 486. One concern previously identified in our testimony on H.R. 4808 remains outstanding, and we have identified new concerns described more fully in this testimony. The Department has concerns with H.R. 486 and could support the bill if our concerns are addressed.

As an initial matter, the Department views this as a unique situation using Bureau of Land Management lands and the provisions

of the Federal Land Policy and Management Act of 1976 to resolve this issue involving the military's need for private lands in Otero County, New Mexico. Given this, we do not expect this matter to serve as precedent for future BLM land exchanges.

Approximately 241 acres of Mesa Verde Ranch, owned by Randall, Jeffrey, and Timothy Rabon are situated within the explosive safety zone surrounding a munitions storage area at Holloman Air Force Base. The safety zone for the munitions storage area was previously included in easements immediately adjacent to the eastern boundary of the base. But several of the safety zone easements have terminated.

To secure the safety zone around the munitions storage area, Holloman Air Force Base considered acquiring the Rabons' 241 acres through acquisition, land trade, conservation easement, or condemnation. Acting on behalf of Holloman Air Force Base, the U.S. Army Corps of Engineers offered to buy the 241 acres from the Rabons. However, the parties failed to reach agreement on a purchase price.

On December 29, 2003, the Rabons submitted a land exchange proposal to the BLM under which they would convey the 241 acres to Holloman Air Force Base in exchange for BLM conveying to them certain inholdings, parcels of BLM-managed public land located within the Rabons' ranch. On July 9, 2004, H.R. 4808 was introduced, which directed the exchange of the Rabons' 241 acres for parcels of BLM-managed public land located within the Mesa Verde Ranch, the same parcels identified by the Rabons' proposal to the BLM in December 29, 2003.

At a September 14, 2004 hearing of the House Resources Subcommittee on National Parks, Recreation, and Public Lands, the BLM testified that it had significant concerns with H.R. 4808. The legislation was not enacted. In the meantime, the military still had been unable to reach agreement with the Rabons on a price at which Holloman Air Force Base could purchase the land.

Under H.R. 486, the Rabons would convey to the United States three parcels of private land totaling approximately 241 acres contiguous to Holloman Air Force Base and located within the required safety zone for the munitions storage bunkers. H.R. 486 directs the Secretary of the Interior to convey to the Rabons approximately 320 acres of public domain land currently managed by the BLM in the State of New Mexico. As distinguished from the BLM parcels identified in H.R. 4808 in the last Congress, the 320-acre parcel of public land, which the Secretary is directed to convey to the Rabons under H.R. 486, is not located within the boundaries of the Mesa Verde Ranch. Rather, it is located near the southern portion of the city of Alamogordo, New Mexico, and has been identified for retention under BLM's land use planning process.

H.R. 486 directs the Secretary to carry out the exchange in a manner provided in section 206 of FLPMA, but waives the provision in section 206(b), which limits the amount of cash that may be paid to equalize exchange values of the Federal land conveyed.

One provision of H.R. 486 remains unchanged from H.R. 4808. We testified as to our concern with this provision on December 14, 2004, specifically as in H.R. 4808, H.R. 486 requires the Secretary of the Interior to assume administrative jurisdiction over the 241-

acre parcels. As stated in our testimony, this acquired land should not be placed under the administrative jurisdiction of this Secretary. The Federal Government's sole purpose in acquiring this is for the protection of military interest at Holloman. The acquired land should therefore be withdrawn to the Secretary of the Army under public land order 833.

H.R. 486 directs the Secretary to carry out the exchange in a manner provided in 206 of FLPMA. Under 206, lands proposed for exchange for the U.S. Government must be of equal value with lands conveyed. If the lands proposed for exchange are not equal values, subsection (b) of section 206 provides for a cash payment by either the Government or the private property owner as appropriate in order to equalize values provided the payment does not exceed 25 percent of the total value of the lands transferred out of Federal ownership.

H.R. 486 waives the 25 percent limitation in section 206(b) of FLPMA. The effect of this provision in H.R. 486 is that the dollar amount of any cash payment to equalize the values in this exchange would not be limited. This is inconsistent with section 206 of FLPMA.

In addition, generally an exchange proponent is responsible for paying appraisal costs. If the legislation requires the Government to pay this cost, funds should be provided for this purpose. We would like to work with the committee to address these concerns.

Thank you again for the opportunity to testify. I would be glad to answer any questions.

[The prepared statement of Mr. Lonnie follows:]

PREPARED STATEMENT OF THOMAS P. LONNIE, ASSISTANT DIRECTOR, MINERALS, REALTY AND RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON H.R. 486

Thank you for the opportunity to present the views of the U.S. Department of the Interior on H.R. 486, legislation providing for an exchange of public and private land in the vicinity of Holloman Air Force Base¹ in New Mexico. In previous testimony on similar legislation (H.R. 4808) given in the 108th Congress, we raised significant concerns, several of which have been addressed in H.R. 486. One concern previously identified in our testimony on H. R. 4808 remains outstanding, and we have identified new concerns described more fully in this testimony. The Department has significant concerns with H.R. 486 and could support the bill if our concerns are addressed.

BACKGROUND

As an initial matter, the Department views this as a unique situation using Bureau of Land Management (BLM) lands and the provisions of the Federal Land Policy and Management Act (FLPMA) of 1976 (P.L. 94-579) to resolve this issue involving the military's need for private lands in Otero County, New Mexico. Given this, we do not expect this matter to serve as precedent for future BLM land exchanges.

Approximately 241 acres of the Mesa Verde Ranch, owned by Randall, Jeffrey, and Timothy Rabon, are situated within the explosive safety zone surrounding a Munitions Storage Area at Holloman AFB. The safety zone for the Munitions Storage Area was previously included in easements immediately adjacent to the eastern boundary of the base, but several of the safety zone easements have terminated. To secure the safety zone around the Munitions Storage Area, Holloman AFB considered acquiring the Rabons' 241 acres through acquisition, land trade, conservation easement, or condemnation. Acting on behalf of Holloman AFB, the U.S. Army

¹Holloman AFB is in south-central New Mexico, near the town of Alamogordo in Otero County. Operated by the United States Air Force, the installation covers nearly 60,000 acres. It is located on lands withdrawn from the public domain for military purposes under Public Land Order 833.

Corps of Engineers offered to buy the 241 acres from the Rabons. However, the parties failed to reach agreement on a purchase price.

On December 29, 2003, the Rabons submitted a land exchange proposal to the BLM under which they would convey the 241 acres to Holloman AFB in exchange for BLM conveying to them certain inholdings—parcels of BLM-managed public land located within the Rabons’ ranch. On July 9, 2004, H.R. 4808 was introduced, which directed the exchange of the Rabons’ 241 acres for parcels of BLM-managed public land located within the Mesa Verde Ranch (the same parcels identified in the Rabons’ proposal to the BLM of December 29, 2003). At a September 14, 2004, hearing of the House Resources Subcommittee on National Parks, Recreation, and Public Lands, the BLM testified that it had significant concerns with H.R. 4808. The legislation was not enacted. In the meantime, the military still has been unable to reach agreement with the Rabons on a price at which Holloman AFB could purchase the land.

H.R. 486

Under H.R. 486, the Rabons would convey to the United States three parcels of private land, totaling approximately 241 acres, contiguous to Holloman AFB and located within the required safety zone surrounding munitions storage bunkers at the base. H.R. 486 directs the Secretary of the Interior (Secretary) to convey to the Rabons approximately 320 acres of public domain land currently managed by the BLM in the state of New Mexico. As distinguished from the BLM parcels identified in H.R. 4808 in the last Congress, the 320-acre parcel of public land which the Secretary is directed to convey to the Rabons under H.R. 486 is not located within the boundaries of the Mesa Verde Ranch; rather, it is located near the southern portion of the city of Alamogordo, New Mexico, and has been identified for retention under the BLM’s land use planning process.

H.R. 486 directs the Secretary to carry out the exchange in the manner provided in section 206 [“Exchanges”] of the Federal Land Policy and Management Act (FLPMA) of 1976 (P.L. 94-579), but waives the provision in section 206(b) which limits the amount of cash that may be paid to equalize exchange values of the Federal land conveyed.

We commend the bill’s sponsor for addressing in H.R. 486 several of the concerns we previously raised in testimony on H.R. 4808. Specifically:

- In response to our concern that H.R. 4808 should specify which acres of public land and privately-owned lands are intended for the exchange, H.R. 486 provides a precise description of the lands to be involved in the exchange.
- We asked for the opportunity to develop a map to portray accurately the exchange proposed in H.R. 4808, and to include reference to the map in the legislation. Subsequent to the September 14, 2004, hearing on H.R. 4808, the Rabons selected different parcels of public land they wished to acquire. The BLM developed a map, which is referenced in section 1(a) of H.R. 486. We note that the bill should be amended to reflect the name of the map as “Alamogordo Rabon Exchange”.
- We objected to the provision in H.R. 4808 that would have deducted the Rabons’ previous expenses (incurred in their response to the military’s efforts to purchase the 241 acres) from any cash equalization payment due to the Federal government as contrary to the public interest. This provision does not appear in H.R. 486.
- In response to our assertion that it was important that lands involved in the proposed exchange be of equal value based upon appraisals prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisition, H.R. 486 directs the Secretary to carry out the exchange in the manner provided in section 206 of FLPMA. This will assure that the appraisals will comply with Federal appraisal standards and the U.S. Department of Justice *Uniform Standards for Federal Land Acquisition*.

CONCERNS WITH H.R. 486

One provision in H.R. 486 remains unchanged from H.R. 4808. We testified as to our concern with this provision at the September 14, 2004, hearing on H.R. 4808. We continue to have concerns with this provision.

Specifically, as in H.R. 4808, H.R. 486 requires the Secretary of the Interior to assume administrative jurisdiction over the 241-acre parcel to be conveyed by the Rabons. As stated in our testimony on H.R. 4808, this acquired land should *not* be placed under the administrative jurisdiction of the Secretary of the Interior. The Federal government’s sole purpose in acquiring this 241-acre parcel is for the protection of military interests at Holloman AFB. The acquired land should therefore be

withdrawn to the Secretary of the Army for that purpose and included within existing Public Land Order 833.

H.R. 486 directs the Secretary to carry out the land exchange in the manner provided in section 206 of FLPMA. Under section 206, lands proposed for exchange with the United States government must be of equal value with the lands to be conveyed out of Federal ownership. If lands proposed for an exchange are not of equal value, subsection (b) of section 206 provides for a cash payment to be made by either the government or the private-property owner, as appropriate, in order to equalize the values of the lands involved in the exchange, provided the payment amount does not exceed 25 percent of the total value of the lands transferred out of Federal ownership.

H.R. 486 [section 1(d)(1)] waives the 25 percent limitation in section 206(b) of FLPMA. The effect of this provision in H.R. 486 is that the dollar amount of any cash payment to equalize the values in this exchange would not be limited. This is inconsistent with the section 206 FLPMA process. In addition, generally an exchange proponent is responsible for paying appraisal costs. If the legislation requires the government to pay this cost, funds should be provided for this purpose. We would like to work with the Committee to address these concerns.

Thank you again for the opportunity to testify on H.R. 486. I would be glad to answer any questions.

Senator CRAIG. Tom, thank you very much for that testimony. I'm going to turn to my colleague, Senator Salazar, for any opening comments he might like to make, and then you may have questions you would want to ask of these gentlemen.

A vote has just started. We can either do tandem here, I can run and vote, you can ask questions, I can get back and you can go, and we'll keep the committee going. How's that?

Senator SALAZAR. That would be just fine.

Senator CRAIG. All right. You're in charge.

Senator SALAZAR. Okay. You'll be back, though?

Senator CRAIG. I'll be back. If you get nervous, just recess and I'll be right back.

Senator SALAZAR. You're going to vote while you're gone?

[Laughter.]

STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Senator SALAZAR [presiding]. It's good being chairman once in a while. Let me first of all just say welcome to all of you, and I appreciate the testimony on these very important pieces of legislation. For me, I have a particular interest in S. 100 because it involves Aspen and Pitkin County, and it's been a project that has been near and dear to the hearts of a lot of people who have worked on this project now for over 10 years. And so I think the effort that has finally come together is one which has a tremendous amount of support including the support of Senator Allard and myself. And on behalf of Senator Allard and myself, I would like to enter our opening statements into the record, and since I'm the chairman I'll say without objection and they will be entered into the record.

[The prepared statements of Senators Salazar and Allard follow:]

PREPARED STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Mr. Chairman, thank you for holding this hearing today on S. 100, which Senator Allard and I have introduced to resolve a longstanding land exchange issue near Aspen, Colorado. I note that both Senator Ben Nighthorse Campbell and Congressman Scott McInnis introduced similar bills in the House and Senate last fall, but there was not enough time to process them. So, I am very pleased we are getting an early start this year.

Mr. Chairman, S. 100 has its roots in efforts which the Forest Service, the Ryan family and various non-profit groups initiated in the early 1980s to acquire the Ryan family's private lands in and near the well-known and historic Ashcroft town-site, some ten miles south of Aspen. The Ashcroft area is extremely rich in recreational, historic and scenic values . . . for example, it was the first place the famous 10th Mountain Division trained before Camp Hale was built . . . and both the Ryan family and the Forest Service agreed that it should be consolidated into public ownership. Accordingly, through a series of land exchanges, and a donation by the Ryan family, all but a 35 acre tract, currently known as the "Ryan Property", is now in Forest Service hands.

Since the early 1990s, when the family indicated they could not donate the 35 acre piece to the United States, the Forest Service, Pitkin County, Aspen Valley Land Trust (AVLT) and numerous others have attempted to secure either purchase money, or a land exchange, to accomplish the task. But it was to no avail. So, in February of 2000 . . . more than 5 years ago . . . when it appeared the Ryan Property was in danger of imminent sale, and possible development, the Supervisor of the White River National Forest asked Pitkin County and the Land Trust to temporarily purchase the property, and to hold it until a land exchange was completed. The County and AVLT agreed, and bought the property for \$3.2 million the very same month.

Since the County and AVLT purchased the parcel in 2000, the promised land exchange has languished—largely because the parcels the Forest Service identified for exchange to the County had title or other problems which thwarted their disposal. There is also a BLM parcel included in the exchange, and that type of three-way transaction requires our approval.

Accordingly, Mr. Chairman, S. 100 directs an exchange of lands between the County, Forest Service and BLM. Because the Forest Service has had difficulty clearing title to its own land, S. 100 takes the somewhat unusual step of placing the title cleanup responsibility in the County's hands. The County has generously agreed to do that. Our bill also insures that the United States will absolutely receive full value for all lands it conveys and, most likely, that some of the value of the Ryan parcel will end up being donated to the Forest Service. Lastly, it requires that the County place a permanent conservation easement on the BLM land it acquires, but specifies that the land be appraised without that encumbrance. So, I do not see how we could craft a better deal for the taxpayers.

Finally, I note that S. 100 has *overwhelming* public support. Not only is it endorsed by Pitkin County, but also by the City of Aspen, Aspen Skiing Company, Aspen Center for Environmental Studies, Aspen Historical Society, the Conservation Fund, Crystal Valley Environmental Protection Association, Crystal-Maroon Caucus, the Friends of Ashcroft, Roaring Fork Conservancy, Sierra Club, Wilderness Workshop and the Wilderness Society. Indeed, in my many years of land conservation work in Colorado, it is hard to remember a project that has more consensus. I have several letters of support from the groups I just mentioned that I would like to enter into the record.*

Again, Mr. Chairman, thank you for holding a hearing on this important bill. I trust that we will be able to move it quickly through the process so that the Ryan Property can finally be placed in public hands, and so that Pitkin County and the Aspen Valley Land Trust can recover the capital they currently have tied up in the Ryan Property for use on other important open space acquisitions.

PREPARED STATEMENT OF HON. WAYNE ALLARD, U.S. SENATOR FROM COLORADO

Thank you, Mr. Chairman, for allowing me the opportunity to share my comments here today and for your leadership. You have been a strong supporter of public lands and I commend you for your efforts as we strive to find a balance between public and private ownership of our nation's land. Not only do you and I share a border, but we share a philosophy—that the best way to govern is through sound policy. Today, this committee will review a bill which I view as very sound policy; S. 100, the Pitkin County Land Exchange Act of 2005.

The Pitkin County Land Exchange Act of 2005, which I sponsored along with my colleague Senator Salazar, would facilitate a multiparty land exchange between the Bureau of Land Management, the Forest Service and Pitkin County. This is a good common sense bill. The federal government has land that Pitkin County wants and Pitkin County has land that the government wants. This legislation would ease federal land management strains by exchanging outlying federal parcels for land adja-

*The letters have been retained in subcommittee files.

cent to current federal land. The bill also benefits Pitkin County by providing the county with land they desire. This bill enjoys much local support and presents a win-win situation for all.

Mr. Chairman, it is my hope that we are able to reach agreement on this bill and pass it favorably out of committee so that we can preserve one of the most spectacularly beautiful pieces of land in this great nation. I thank you and the Committee for your time and consideration.

Senator SALAZAR. Let me just say that when you think about the number of organizations that came together to try to work on S. 100, it is incredible because it's the kind of example that we ought to be seeing all across the West. We had the Aspen Valley Land Trust, who's worked on this now for about a decade, the Aspen Center for Environmental Studies, the Aspen Historical Society, Aspen Skiing Company, the Ashcroft Ski Touring Organization, the Conservation Fund, the city of Aspen, Crystal River Caucus, Crystal Maroon Caucus, the Crystal River Environmental Protection Association, Friends of Ashcroft, Pitkin County Board of County Commissioners, the Roaring Fork Conservancy, the Sierra Club from the Roaring Fork area, Wilderness Workshop, and the Wilderness Society.

And so I believe that S. 100 has extensive support on the part of everyone who knows the project. I am very supportive of the project and look forward to your support on the legislation.

I have one question for you, Mr. Holtrip, and that was in the comments from the agency. You said you were supportive but there was some concern that I think you had on the reversionary provision that you wanted included in the legislation. I'd like you to comment on that if you would.

Mr. HOLTRIP. Yes, that's correct. The request is that the reversionary clause be clarified that it is discretionary for the Department of the Interior in order to provide for any concerns on down the road in terms of any liability for the Federal Government.

Senator SALAZAR. Okay. And you—I expect you'll work with your staffs to try to address the concerns that you've raised with respect to that clause?

Mr. HOLTRIP. Yes. And we have been working with the Department of the Interior on that, and Mr. Lonnie may have some additional thoughts on that.

Mr. LONNIE. Yes, we'd be happy to work with the staff on that, Senator.

Senator SALAZAR. Well, thank you very much. Let me ask you since I have you captive here and since the other pieces of legislation here are in States other than Colorado, are there other exchanges, Mr. Holtrip, that you are aware of within Colorado that are pending that you would like to take the opportunity to brief me on?

Mr. HOLTRIP. I'm going to turn to Mr. Smith, who is our Director of Lands, if he's aware of any.

Mr. SMITH. Not at this time. I think that we have been working closely with all the States in the land exchanges that we have in Colorado, so I don't think at this time we have anything pending.

Senator SALAZAR. Let me ask both of you this general question, and that is in the whole area of land exchanges, we have done a lot in terms of land exchanges, I think, over the last several decades, especially in Colorado, and I would assume that's the case in

many States across the West and perhaps across the country. This experience that we had here with this tract in Pitkin County ended up taking us about 10 years to finally get done.

Are there any general observations or recommendations that you might want to make to me as a member of this committee on how we might be able to make land exchanges go forward in a smoother and more quicker, perhaps more efficient manner? Or do we have a system that currently is working in exactly the way that it should be working?

Mr. HOLTRIP. Well, I think that there are—there are some concerns as to the amount of time it takes for us to go through some of our administrative land exchange processes. It was just a few weeks ago, since I'm fairly new to the position I'm in, I was talking to Greg about that very question, and I asked, how long do our administrative land exchange processes normally take? And I'm not sure that there's a good answer that refers to a normal process.

I think there are many exchanges that run through smoothly and happen in a fairly short period of time, probably measured in a few years. And then some of them are more complicated with more issues around different interests wanting to make sure that they're accomplishing different things that sometimes take a considerably longer period of time.

It may be that the ones that rise to the level of us at the national level or rise to the level of being dealt with in the committee are some of the more complicated ones. Again, I think that there are some things that we can take a look at, and to determine our administrative land exchanges taking longer than they ought to, and what are some of the things that we can do to fix that.

Senator SALAZAR. In my own sense of having worked on some of these land exchanges in my prior role in Colorado is that if you have a community consensus, they're much easier to get done. And often what ends up happening is you have one stakeholder or one group that isn't on board. And so that requires the process sometimes to drag on for a longer period of time than it should.

But if you would think about and maybe provide some information to me, I would appreciate it, with respect to whether or not in a typical—maybe it's not the typical situation—but in a situation where you do have a community consensus for a particular exchange, so it's a non-controversial exchange, is there anything that we could do either administratively through regulation of our public land agencies, or else through a change in the law, to try to expedite that process, I would very much appreciate that.

Mr. HOLTRIP. We'd be happy to look into that and provide you some additional information such as that. And again, I would—I do concur that when a community has come together, as obviously Pitkin County and those folks around Aspen have on this particular exchange, that certainly does make the process easier and appreciate the amount of support for this exchange from the community and the wide array of interest groups, as you indicated in your statement.

Even in that case, there are situations in which Pitkin County is looking for open space. And there were some aspects of the National Forest System land that was being looked at, that took some time as the county was trying to make sure that they were able

to meet their open space requirements in looking at the National Forest System parcels. It was a couple of years ago when the county determined that perhaps the Federal parcel that would best meet their needs was the Bureau of Land Management parcel, the 40-acre parcel. It was at that time that it became clear that our administrative process would not be sufficient, since there's two different agencies involved at that point.

Senator SALAZAR. Okay. Let me just find out what the timing is on the vote. I think Chairman Craig is going to come back and ask just a few questions. And so just to make sure that I don't miss the vote, if you will just hang with us for a few minutes. We're going to have the committee go into recess, but I assume that Chairman Craig will be right back and call the meeting back to order, so let's just hang tight for a few minutes and he'll be right back. Thank you very much.

[Recess.]

Senator CRAIG [presiding]. Well, thank you, gentlemen, for your patience. Let's move on here. I've got several questions.

Joel, this question is of you, and it relates to S. 100. I mentioned in my opening comments some of our frustration about the timeliness of the ability of the Forest Service to move on certain exchanges. I'm beginning to feel that the Forest Service administrative land exchange process is completely dysfunctional. It appears after literally years and years of effort on the part of some where there appears to be no difficulty or at least limited difficulty, we find we're having to legislate relatively minor or sometimes quite small exchanges.

Would you have your staff prepare a spreadsheet on all land exchanges over the last decade? Please rank them by the number of acres being exchanged and provide a column that shows how many years each exchange has been in the works. So starting from let's say the time when the Forest Service or the private party first suggested the exchange. And finally, please show which exchanges were completed through the administrative process and which exchanges had to be legislated.

I may be way out in left field, but it seems like we're legislating more and more of these exchanges. We gave the Forest Service the authority to process these in a timely fashion. So if you could do that for us, I think it would be worth our time, and then working with you all to see how we might effectuate more streamlined processes if need be.

Dealing with S. 235 and H.R. 816, Federal lands in Carson City and Douglas County, Nevada, I know the administration has expressed concern about the amount of money generated by the sale of some of the properties from the Southern Nevada/Clark County bill we passed a couple of years ago. I suspect some of these properties may also generate significant sums, those in the current legislation.

As in the past, you have testified that the administration has some concerns with the receipt-sharing formula in the bill. I also note that the agency is suggesting in its budget request for 2006 it be allowed to dispose of administrative sites and keep the revenues to help pay for building maintenance and construction.

Tell me why we shouldn't require the revenues from these conveyances and others that you will be proposing be counted as gross receipts to be shared with the counties or to help pay for the county payments under the Craig-Wyden School Bill.

Mr. HOLTRIP. Well, first of all I want to be clear in saying that we recognize the importance of education and the school bill and recognize that there are—in tight fiscal times we need to look at a full array of funding needs.

The administration's 2006 budget and beyond reflects a reduction in the overall allocation for our facilities maintenance program. The Department's 2006 Forest Service facility realignment and enhancement legislative proposal would provide for greater efficiencies in the management and realignment of administrative sites on the National Forest system, and receipts derived from the conveyance of those sites and facilities would be deposited in the Sisk Act Fund and remain available to the Secretary for administrative site purposes.

If we do not receive the proceeds from the conveyance of properties such as this, our ability to acquire, to improve, to reduce the Forest Service's deferred maintenance backlog would be seriously affected.

Senator CRAIG. S. 404, to make a technical correction relating to the land conveyance authority under Public Law 108-67. I see from the map you have provided for the committee that the lands to be conveyed to the Washoe Tribe have shifted southward, and now much more of Forest Service 15 north 67 will fall within the conveyance.

In the original bill, as I recall, the Forest Service retained a right-of-way for the road. Will you continue to retain the right-of-way on the Forest Service road 15N67?

Mr. HOLTRIP. Yes, we would. The conveyance under section 2 of the Public Law 108-67 was made subject to a reservation to the United States for non-exclusive easement for both public and administrative access.

Senator CRAIG. Okay. Can you tell us why the Forest Service or the Washoe Tribe needs to shift the conveyance to the south?

Mr. HOLTRIP. Well, I can only speak for the Forest Service in saying that we support the goal of providing meaningful access to the area for the Washoe Tribe. We're committed to working with the tribe regarding their land acquisition goals and recognize the shift of the conveyance to the south will pose challenges to the Lake Tahoe Basin Management Unit in managing public access.

One of the things that happens with this shift to the south is a sandy beach area that is used by many members of the public, all but 90 feet of that would be conveyed to the Washoe Tribe, and that would create some public access issues.

It's my understanding that today the acting forest supervisor of the Lake Tahoe Basin Management Unit and the Washoe Tribe are out on the property walking the property trying to understand each other's needs and concerns on those types of access issues.

Senator CRAIG. You mean we may have to shift the description a little more after today's walk-around?

Mr. HOLTRIP. Or there may be other alternatives that will accomplish some of the access concerns.

Senator CRAIG. I see. Okay. The reason I was concerned about right-of-way, I think it's called the Newhall House, there's a property, the road access house has to be gained through this conveyance. And you're comfortable that the right-of-way you retain will allow that?

Mr. HOLTRIP. That's my understanding, yes.

Senator CRAIG. Okay. S. 741, to provide for the disposal of certain Forest Service administrative sites in Oregon and other purposes, if you were still selling timber in Oregon like you did before the Clinton Northwest Forest Plan was finalized, would you still have a need for the administrative sites that you will be disposing of in S. 741?

Mr. HOLTRIP. Well, you know, our past infrastructure needs were reflective of the access and the resource needs then. The administrative site needs of the Forest Service in Oregon have changed over the past decade. Each of the national forests involved, the Rogue River, Siskiyou, Siuslaw, Umpqua, and Willamette, have determined that their administrative site needs are through—what those needs are through their facility master planning effort. And these administrative site needs are now reflective of their current program of work, both now and what they're foreseeing into the future.

Senator CRAIG. The Clinton Northwest Forest Plan was finalized, I believe, in 1994. Why has it taken the Forest Service a decade to decide to dispose of these properties?

Mr. HOLTRIP. Well, it was in the mid-1990's that we recognized the need to realign our facilities commensurate with our program of work. In order to make the realignment changes, we updated our facility master planning process, the process that we go through for that facility master planning, in 1995.

It's taken us time to standardize and implement that process across the entire National Forest Service system, and that process was finalized in 2003. Over the past several years, we have been using the pilot conveyance authority and other authorities available to us in order to dispose of facilities.

For example, as my testimony indicated, seven of the tracts identified in S. 741 have already been sold under the pilot conveyance authority.

Senator CRAIG. The reason, Joel, I mention this is I assume that in that decade of time that it took you all to create a mechanism and make a decision, these sites were sustained and maintained.

Mr. HOLTRIP. To varying degrees, that's correct.

Senator CRAIG. Right. And that costs money.

Mr. HOLTRIP. Yes.

Senator CRAIG. And here today you are seeking to sell land for the purpose of gaining money so that you can sustain sites and sustain operations. I'm really getting quite serious about the fact that it takes a decade for you all to make a decision. And your inability to make decisions costs money. And in your role, I would hope that you could look at mechanisms or come to us if you've got impediments within the law.

Obviously, we want property fairly handled, fair values brought, and all of that, but the time it takes and the money it takes to process these properties are sometimes more valuable than the

properties themselves. And while that is probably less the case today than ever before, it's still a reality, and I'm suggesting that time has value, except in government.

If this were a private company making that decision in 1994, they would have been sold by 1996, I would guess. I know we're not private companies in private business, but we ought to try to grasp a little of the essence of getting things done in a timely fashion when the determination is made that they're not needed anymore. I grow very frustrated by those kinds of processes.

Mr. HOLTRIP. Could I just say that I agree? I know that our chief also agrees with concerns over how long it sometimes takes for us to go through some of these types of processes. Referring back to your request on the administrative land exchanges, as another one of those examples that you're talking about, I believe that we'll be more than happy to provide the—

Senator CRAIG. Well, I think it will give us a good perspective.

Mr. HOLTRIP [continuing]. Information that you're providing. And it's our intention of looking at that, because we are aware of the perception that our administrative land exchanges sometimes take longer than we want them to. And we believe that providing you that information will also provide us the opportunity to look at what are some of the things that we need to do.

Senator CRAIG. Super. Thank you very much. Tom, thank you for your testimony. S. 761, to rename to Snake River Birds of Prey Area to the Morley Nelson Snake River Birds of Prey National Conservation Area in honor of Morley is of great value to the State of Idaho—and we believe to the Nation—as it relates to recognizing Mr. Nelson.

I assume that when this legislation is signed—well, first of all, I know you chose not to comment about it. So I have to assume that when this legislation is signed into law, the BLM will schedule a renaming ceremony at the conservation area to celebrate Morley's accomplishments. Can I count on that?

Mr. LONNIE. You can absolutely count on it, Mr. Senator. We'd be delighted to do that.

Senator CRAIG. Great. Thank you very much. H.R. 486, to provide a land exchange involving private land, the Bureau of Land Management, in the vicinity of Holloman Air Force Base, New Mexico, for the purpose of removing private land from the required safety zone surrounding munitions storage bunkers at Holloman Air Force Base. I spent a little more time looking at this because I can't quite figure out what this is all about.

I'm wondering why the BLM has to foot the bill for this exchange given that Holloman Air Force Base and the private landowner seem to be the ones that benefit from the exchange. Would you object if we force the Department of Defense and the private land owner to pay for the cost of the exchange?

Mr. LONNIE. As we testified, Senator, generally the proponent of a land exchange is responsible for paying for the appraisal costs. In H.R. 486, BLM-managed lands are offered as a solution to a problem between Holloman Air Force Base and the Rabons. The public interest would be served if your suggestion is adopted.

Senator CRAIG. Help me understand why the Federal Government is giving up 320 acres in exchange for only 241 acres.

Mr. LONNIE. We testified that the provision in H.R. 486 waiving the 25 percent limitation on cash equalization payments is inconsistent with section 206 process in FLPMA. Senator, when we previously had testified on S. 4808, one of the things that we had identified, and we applaud the sponsor for incorporating it here, is its use of the section 206 process, because that will assure that we use uniform appraisal standards, so equal value and fair market value will be captured. But we do have concerns associated with the waiving of the 25 percent equalization payment money.

Senator CRAIG. Okay. I also note that several southeastern New Mexico environmental groups claim the BLM determined that the BLM land in question was needed for the protection of the Sacramento Mountain prickly poppy, a Federal endangered species contained within the boundaries of the adjoining Sacramento Escarpment area of critical environmental concern. To your knowledge, does the Sacramento Mountain prickly poppy occur on the BLM lands to be traded in this exchange?

Mr. LONNIE. No, they do not. The special status species occurs within the ACEC—area of critical environmental concern—but not within the 320-acre parcel located outside the ACEC.

Senator CRAIG. Did the agency determine that these 320 acres of the BLM land were needed for the protection of the poppy?

Mr. LONNIE. No, there were—there are no large-scale permitted uses in the 320-acre parcel, but a variety of casual and day-use activities occur. The 320-acre parcel serves to absorb land use impacts from casual and day-use activities so that these uses do not disturb special status plant and animal species in the neighboring ACEC.

Senator CRAIG. Well, my last thought here in looking at the map, and that's all I know about this, is that by just looking at the map, it appears that the lands the Government is giving up should be more valuable than what they are getting. I think you've commented on that as it relates to the appraisal process. Do you have any additional comment or care to comment on it?

Mr. LONNIE. Not at this time, Senator, but we would be more than happy to work with the sponsor and the committee on any changes that we suggested in our testimony.

Senator CRAIG. Okay. Well, gentlemen, thank you very much. We've gotten you out of here slightly before 3 o'clock. Joel, I think you had a commitment that was going to cause you to exit at least by then. We appreciate your attentiveness to these issues, and we'll be back to you for any corrections we feel are necessary in working with you to move these pieces of legislation forward.

Thank you very much, and the subcommittee will stand adjourned.

[Whereupon, at 2:55 p.m., the hearing was adjourned.]

[The following statement was received for the record:]

STATEMENT OF CHRISTOPHER KRUPP, STAFF ATTORNEY, THE WESTERN LAND
EXCHANGE PROJECT, SEATTLE, WA

TESTIMONY REGARDING H.R. 486

My name is Christopher Krupp, and I am the staff attorney of the Western Land Exchange Project, a non-profit organization monitoring federal land sales and exchanges and working for long-term substantive reform in federal land disposal policy. I submit this testimony to urge you to oppose H.R. 486, a bill to provide for

a land exchange involving private land and Bureau of Land Management (BLM) land in the vicinity of Holloman Air Force Base, New Mexico.

H.R. 486 circumvents two of our nation's important environmental and public lands laws, namely the National Environmental Policy Act (NEPA) and the Federal Lands Policy and Management Act (FLPMA). NEPA would normally require the Bureau of Land Management to study the environmental impacts of the proposed land exchange, develop a reasonable range of alternatives to the proposal, and provide the public with one or more opportunities to comment on the proposal. There are very good reasons why implementing each of those NEPA elements would benefit the land trade proposal in H.R. 486. First, studying the environmental impacts would help determine the potential harm of trading away 320 acres of buffer zone that protects the Sacramento Mountains prickly poppy, a species in documented decline and known only to exist in Otero County, New Mexico. Second, by developing a reasonable range of alternatives, the BLM may well identify means of acquiring the private land adjacent to the Air Force base without the public giving up the buffer lands identified for trade in the bill. Finally, the public comment requirements in NEPA ensure that the public has an opportunity to weigh in on the proposal after it has learned of the impacts and alternatives. This is usually not possible with legislated land exchanges because such detailed information cannot be provided in the text of land exchange bills.

H.R. 486 averts the FLPMA mandate that the difference in the appraised value of federal and non-federal lands in a land exchange not exceed 25 percent, with the difference to be paid in cash. H.R. 486 specifically exempts the land trade from this requirement, so if the federal land has an appraised value twice that of the private land adjacent to Holloman AFB, the private landowner can simply pay the difference in cash rather than accepting a smaller amount of BLM land. There is no valid reason for this exemption from FLPMA; it simply guarantees the private party that it can acquire all the land it is seeking, whatever the ultimate appraised values.

FLPMA also requires that all BLM proposals conform to the agency's relevant Resource Management Plan (RMP). Prior to H.R. 486's introduction, BLM, in consultation with the U.S. Fish and Wildlife Service (FWS), determined that the 320 acres of federal land must be retained in public ownership because of the land's importance in protecting the prickly poppy on adjacent public land. The BLM would therefore not make the trade identified in this bill, because it would violate the RMP covering the land at issue. H.R. 486 circumvents the agencies' informed decision regarding this land in order to reward a single constituent.

It is important to note that the eminent domain/condemnation proceedings that were first considered to acquire the private lands for the Holloman safety zone would justly compensate the private party. In fact, the private lands would be appraised for the same market value under condemnation proceedings or H.R. 486. The only notable difference is that condemnation proceedings would not provide a way for the private party to acquire land that the BLM and FWS believe serves an important public function. After condemnation proceedings the private party would, of course, be able to acquire other public land in the area that the BLM has identified for disposal in the relevant RMP.

In summary, I urge the Subcommittee on Public Lands and Forests to oppose H.R. 486. The bill circumvents longstanding law enacted to inform the public and protect the public interest, and trades away land that the BLM has determined is essential for protecting a plant found in only one county in the United States. A better solution to the safety zone problem at Holloman is for the Department of Defense to acquire the private land by the usual condemnation/eminent domain proceedings. Thank you for your consideration.

APPENDIX
RESPONSES TO ADDITIONAL QUESTIONS

DEPARTMENT OF THE INTERIOR,
OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS,
Washington, DC, June 20, 2005.

Hon. LARRY E. CRAIG,
*Chairman, Subcommittee on Public Lands and Forests, Committee on Energy and
Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Enclosed are responses prepared by the Bureau of Land Management to questions submitted following the May 11, 2005, hearing on S. 100, the Pitkin County Land Exchange Act of 2005, and H.R. 486, land exchange near Holloman Air Force Base, New Mexico.

Thank you for the opportunity to provide this material to the Subcommittee. Sincerely,
Sincerely,

JANE M. LYDER,
Legislative Counsel.

[Enclosure.]

SUPPLEMENTAL QUESTIONS

S. 100—THE PITKIN COUNTY LAND EXCHANGE ACT OF 2005

Question 1. Please provide an estimate of the value of the parcel of BLM land to be exchanged pursuant to S. 100.

Answer. The BLM has not undertaken an appraisal of the parcel identified for exchange in S. 100. In addition, we do not have appraisals on any comparable parcels in the area. However, a very rough estimate of the value of the 40-acre parcel would be between \$500,000 and \$1,500,000.

H.R. 486—LAND EXCHANGE NEAR HOLLOMAN AIR FORCE BASE, NEW MEXICO

Question 1. As you noted in your testimony, the BLM lands to be exchanged are designated for retention. At the subcommittee hearing you testified that the BLM could support the exchange, although you did not recommend alternate lands or ask for any special restrictions on the lands to be exchanged. Has the BLM's position changed on the value of retaining the lands to be exchanged under this bill?

Answer. The BLM's position on the value of retaining the 320-acre parcel identified in H.R. 486 has not changed; the parcel is identified for retention in the BLM's "Otero County Areas of Critical Environmental Concern/White Sands Resource Management Plan Amendment," (RMPA) of December 19, 1997.

This dispute is between the Rabons and the military. While we believe that the public interest would be better served if the Rabons and the military were able to agree on a price at which the military could purchase the 241 acres from the Rabons, the BLM could support the use of public lands as a means to resolve this dispute, provided the BLM is reimbursed for all its costs associated with this exchange.

The BLM supports land exchanges of equal value, and the Rabons' initial land exchange proposal of December 23, 2003, (rangeland for rangeland) appeared to meet this standard. However, in September of 2004, Representative Pearce indicated to the Department that the Rabons were no longer interested in acquiring the inholdings identified in their proposal, but instead would convey their 241 acres to the military in exchange for acquiring a 320-acre parcel of public land located adjacent to the Sacramento Escarpment ACEC. These are the lands identified in H.R. 486.

Thus, the exchange was transformed from one of approximately equal land values to one with significantly disparate land values. Our position on H.R. 486, that we could support the proposed exchange if amendments were adopted, reflects our intent that the public receive full value for the 320-acre parcel and the BLM is reimbursed for costs if Congress directs that this parcel be conveyed into private ownership.

Question 2. Your testimony references an earlier proposal to exchange the lands for “BLM inholdings” on the Rabon ranch. Were those lands designated for disposal? Would the BLM support an exchange for those lands? If both parties were to agree to that exchange, could it be handled administratively without any Congressional intervention?

Answer. The BLM inholdings on the Rabons’ ranch were identified for disposal in the BLM’s 1986 White Sands Resource Management Plan (the disposal designation was not affected by the 1997 RMPA).

The BLM could support an exchange of these lands as part of a comprehensive solution, described in more detail below, involving the Rabons and the Corps (or other Defense Department entity acting on behalf of Holloman AFB). Such a comprehensive solution could be handled administratively without congressional intervention, and might be structured as follows:

Part 1: Land Exchange between the Rabons and the BLM under Sec. 206 of FLPMA. The BLM’s authorization to do land exchanges is provided in Section 206 of FLPMA. The Rabons convey their 241 acres to the BLM, in exchange for BLM lands of equal value selected from the “inholdings” that were identified by the Rabons in their December 2003 proposal and reflected in H.R. 4808 as introduced.

Part 2: DOD withdrawal application under Sec. 204(a) of FLPMA. The Corps (or other Defense Department entity acting on behalf of Holloman AFB) files with the Secretary of the Interior an application to withdraw the 241 acres of newly acquired federal land for the exclusive use of Holloman AFB.

Question 3. You mentioned in your testimony that the private lands covered by the bill were formerly under a restrictive easement. Please provide the Committee with the history of those easements, their current status (including why they are no longer in effect), and the current status of any neighboring lands and whether they currently have or may require easements in place.

Answer. The U.S. Army Corps of Engineers, on behalf of Holloman AFB, maintains the full record of easements associated with the installation. However, our records show that no restrictive easements currently exist for the 241 acres.

Question 4. In November, 2003, the Department of the Interior testified before the Committee in favor of a bill (S. 1209 in the 108th Congress) to authorize a legislative taking of certain lands in Washington County, Utah. Under that legislation, the value of the lands acquired by the United States would be determined by a Federal court. Would the Department similarly favor such a solution in this case? Do you have any information that would guide the Committee as to the likely value of the Rabon lands?

Answer. If legislation providing for a legislative taking of the 241 acres of private land located within the munitions storage security zone at Holloman AFB were introduced, the Department of the Interior would defer to the Department of Defense concerning a position on such a bill. Such a solution would return resolution of this issue to the two principal parties: the Rabons and the military.

The BLM was not a party to the efforts by the U.S. Army Corps of Engineers, on behalf of Holloman AFB, to acquire the 241 acres from the Rabons. However, it is our understanding that the Corps prepared an appraisal of the 241 acres. On August 3, 1999, the Corps sent the Rabons a letter offering \$20,000 to purchase a restrictive easement; the Rabons rejected this offer.

Question 5. Your testimony referred to the Department of the Interior’s significant concerns with prior legislation concerning this issue (H.R. 4808 in the 108th Congress). Did the Department have any concern with the specific lands to be exchanged under that bill? What would the Department’s position be if H.R. 486 is amended to authorize the exchange of lands identified in H.R. 4808?

Answer. Our concern with the specific lands identified for exchange in H.R. 4808 as introduced on July 9, 2004, was that the lands to be exchanged be of equal value or that the bill allow for an equal value exchange. The Department would support an amendment to H.R. 486 which provided for a legislated exchange of lands as identified in H.R. 4808. Such an amendment would greatly reduce, although not eliminate, the disparity in values of the lands to be exchanged. We urge the Committee to provide for equal values in a legislated land exchange, for example, by reducing the number of acres the BLM is to convey to the Rabons until the land values are equalized. Alternatively, if Congress directs the BLM to sell to the Rabons

the lands identified in H.R. 4808 as introduced, we believe the public should receive fair market value and the BLM be reimbursed for its costs associated with the sale.

Question 6. If H.R. 486 is enacted without amendment, how would the BLM manage the parcel it would acquire?

Answer. The 241 acres were identified by Holloman AFB as essential to its munitions storage security zone. The land would be acquired by the Federal government for that purpose. As such, the acquired land would not be available for multiple use management under Federal Land Policy and Management Act. The Secretary of the Interior would issue a Public Land Order withdrawing the acquired land and adding it to the military lands withdrawn under Public Land Order Number 833.

Question 7. You expressed concern with the provision of the bill that waives the 25 percent limitation in section 206(b) of the Federal Land Policy and Management Act of 1976 (FLPMA); if that provision were removed, how would the exchange be completed, assuming the values of the two parcels differ by more than 25 percent?

Answer. If H.R. 486 were amended to eliminate the waiver of Section 206(b) of FLPMA, the exchange would proceed in accordance with Section 206 of FLPMA. Specifically, an appraiser would prepare a preliminary estimate of the values of the Rabons' 241 acres and the 320-acre parcel of public land in order to determine a gross estimate of the disparity in values. Based on this preliminary estimate, the number of acres of public land to be conveyed out of Federal ownership would be adjusted (reduced) to the point that the land values are approximately equal. A final appraisal would be prepared on the adjusted acreage.

QUESTION FROM SENATOR BINGAMAN

Question 1. I would like to follow up on previous questions I submitted concerning the proposed land exchange near Holloman Air Force Base. To better understand the history of the land exchange proposed in H.R. 486, I would like you to include in your response any information (such as correspondence among the parties, any valuations of the various lands considered, or information on alternative proposals considered) that may give further explanation of your answers. Since the Army Corps of Engineers was the original negotiator tasked with resolving the safety zone issue, please also provide any documentation you may have related to their efforts to arrive at a solution.

Answer. The information requested in the above question has been retained in subcommittee files.